

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Incentive Auction Task Force and Media	)	MB Docket No. 16-306
Bureau Seek Comment on Post-Incentive	)	GN Docket No. 12-268
Auction Transition Scheduling Plan	)	

**COMMENTS OF DTV AMERICA CORPORATION**

DTV America Corporation (“DAC”) hereby submits these comments in response to the Public Notice that was released on September 30, 2016 (DA 16-1095) in this proceeding (“Public Notice”). DAC strongly supports the ability of all television stations – low power (“LPTV”) as well as full power – to operate on temporary channels as part of the Commission’s proposed phased transition scheduling plan. DAC maintains that the Commission does not have to *mandate* such temporary operation, but there is no legal justification to prohibit a station from utilizing an available temporary channel and such station is willing to undertake the associated expense.

DAC presently operates 43 LPTV stations and anticipates commencing operations on approximately 50 more such stations between today and the end of calendar year 2017. DAC’s stations provide popular, free and over-the-air programming to tens of millions viewers from coast to coast. On its stations, DAC distributes 29 television networks targeted to English and non-English speakers alike, including Telemundo, GetTV, MyNet, Antenna TV, Comet, CoziTV, American Sports Network, QVC, Laff, Hmong TV, Bounce, Estrella, Azteca America, Altavision and Accuweather.

Each of DAC’s stations already operates in a digital format, with equipment that can accommodate multiple programming streams within each six Megahertz channel and can be tuned to any frequency. DAC’s frequency-agile, state of the art equipment is likely unmatched when

compared to the equipment of most other LPTV operators, and in many cases DAC's equipment is superior to its full-power television station brethren. Indeed, DAC already operates its stations exclusively via Internet Protocol, and is uniquely positioned to make a smooth transition to ATSC 3.0, likely far more easily than many full-power stations.

The Commission has confirmed that LPTV stations, such as DAC's stations, provide an "important" service to the viewing public.<sup>1</sup> In so doing, the Incentive Auction R&O (at ¶¶ 657-659) expressly stated that LPTV stations will have the opportunity to select a new channel, after full power and Class A stations have submitted their construction permit applications for their own new channels. And pursuant to the 3<sup>rd</sup> LPTV Report and Order (at ¶ 40), LPTV stations will have the ability to utilize the incentive auction optimization and repacking software to identify new channels for displaced stations.

The Public Notice sets forth an ambitious and expedited construction schedule during the first few phases of the 39-month post-incentive auction transition period. It appears that there will be nearly 100 "linked-station" sets and many of those linked-station sets will consist of multiple stations. Accordingly, the ability of a station to operate during the 39-month transition period will hinge upon how quickly other stations in its linked-station set are able to work through the transition process. Essentially, the very business of each station within a linked-station set will be at the mercy of every other station in that set.

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<sup>1</sup> See, e.g., *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) ("Incentive Auction R&O"), at ¶¶ 656-657 and 662, *aff'd*, *Nat'l Assoc. of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927 (2015) ("3<sup>rd</sup> LPTV Report and Order"), at ¶¶ 1, 47 and 89.

As a way of alleviating that stress, the Public Notice floated the concept of allowing a station to operate on a temporary channel during the transition.<sup>2</sup> However, the Public Notice at ¶ 20 quickly shot it down, but based on only two justifications: (1) that viewers would be “confused” if stations moved twice; and (2) a station seeking to operate on a temporary channel would have to acquire additional equipment, placing demands on resources and increasing the overall costs of the transition. The Public Notice did not provide any support for either contention.

That is because the Public Notice’s conclusions are unjustifiable. The Public Notice did not take into account the advanced equipment used by stations such as employed by DAC, which can be easily re-tuned to any frequency. Indeed, the costs accruing to DAC to change any of its station’s channels would be infinitesimal. And as for viewer confusion, in the weeks prior to any change to a temporary channel, DAC would pledge to embark on an aggressive campaign to alert viewers of the need to re-tune their sets so that over-the-air viewers would know that the popular programming to which they had become accustomed would become available on a different channel in the relevant market.

The Public Notice at ¶ 21 stated that if – despite its misgivings – the Commission elected to allow a temporary channel assignment, it would be conditioned on: (a) replicating pre-auction coverage area and population served; (b) operating on a new channel that is “close” to the station’s ultimate channel assignment; and (c) requesting Special Temporary Authority (“STA”) within 90 days after the release of the Public Notice announcing the end of the reverse and forward auctions and specifying the effective date of the post-auction repacking (“Closing and Reassignment PN”).

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<sup>2</sup> The Public Notice seems to suggest that temporary channels could be utilized only by full-power stations and Class A low power stations. But there is no reason to exclude LPTVs from this accommodation, particularly in light of the important programming service that LPTV stations provide to millions of viewers.

In addition, the Commission indicated that if the proposal were accepted, it would permit only those stations in “complex” cycles of interdependency to request a temporary channel.

DAC supports the premises set forth in the preceding paragraph and ¶ 21 of the Public Notice, but believes that the limitations are not necessary. As for (a) – replicating the pre-auction coverage area and population – DAC maintains that an STA request should be granted as long as operation on the temporary channel results in no worse than a two percent (2%) reduction in pre-auction coverage area and population. That amount would be in keeping with the two percent (2%) limitations imposed on modification applications that were routinely approved prior to the final 2009 analog-to-digital transition.

As for (b) – requiring the temporary channel to be located “close” to the station’s final channel assignment – there is no reason for this limitation. Stated simply, if a station can find a vacant channel in its market, it should be able to move to such channel. The purpose of allowing temporary channels would be to sustain the vibrancy and popularity of the programming provided to viewers by LPTV stations. Accordingly, similar to the Commission’s decision to allow FM translators to be moved up to 250 miles and to change frequencies to any open commercial frequency in the FM band as a way of bolstering the AM station that would be rebroadcast on the FM translator, an LPTV station should be able to move to any open frequency during the 39-month transition period. Limiting a station’s options for finding a temporary channel would unnecessarily frustrate the ability of a station to continue serving its viewers during the transition.

As for (c) – requiring all STA requests to be made within 90 days after the release of the Closing and Reassignment PN – and the final limitation – permitting only those stations in “complex” cycles of interdependency to request a temporary channel – again, there is no support for either proposition. In order to accommodate the important public interest benefit of allowing

LPTV stations to provide programming to its viewers, DAC maintains that requests for STA should be able to be made at any time and by any LPTV station. The LPTV station should then be permitted to operate on the temporary station until such time as it is displaced by a station that becomes operational pursuant to a previously-authorized construction permit.

Lastly, an additional justification for allowing LPTV stations to operate on temporary channels during the post-auction transition is a point that the Public Notice failed to take into account: the possibility that a station's license could be canceled automatically, pursuant to Section 312(g) of the Communications Act of 1934, as amended, for failing to transmit a broadcast signal during any consecutive twelve month period. The Commission already anticipates that the transition process could take at least 39 months to complete. Thus, there remains a stark possibility that LPTV stations (and possibly Class A and full power stations) that are displaced or are subject to a complex linked-station set of interdependency may be off the air for twelve consecutive months during that 39-month period. If the Commission allowed a station to operate on an authorized temporary channel, such station would no longer be at risk of losing its license for failure to comply with Section 312(g).<sup>3</sup> And viewers would not be at risk of losing their ability to enjoy their popular programs via the free, over-the-air broadcast service that is the hallmark of the American broadcasting system.<sup>4</sup>

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<sup>3</sup> If for some reason the Commission stands by its tentative conclusion to not allow a station to operate on a temporary channel, and such station is displaced at any time during the transition, such that it is no longer authorized to operate on any channel, then the Commission must make some kind of allowance to ensure that the station does not lose its license for failing to transmit broadcast signals for a consecutive twelve month period. As part of this proceeding, the Commission should make clear that, pursuant to the "equity and fairness" proviso already set forth in Section 312(g), no station that is displaced during the transition will lose its license solely because of a failure of that station to broadcast for twelve consecutive months.

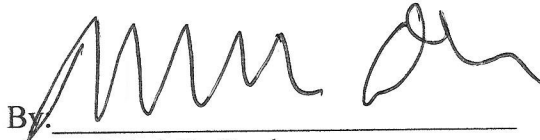
<sup>4</sup> An added public interest benefit of allowing LPTV stations to find temporary channels would be that full-power and Class A stations would be able to utilize LPTV stations as "lighthouse" stations during the 39-month repack period.

## **CONCLUSION**

For the reasons set forth herein, DAC respectfully requests that the Commission allow displaced LPTV stations to operate on temporary channels during the 39-month post-auction transition phase. If a station is able to find an open channel in its market and is willing to expend the necessary resources for buildout, it should be able to obtain STA to operate on that frequency until such time as it is displaced. This proposal serves the public interest because it will allow LPTV stations to serve its viewers with popular programming without significant interruption during the transition. There is no corresponding public interest benefit to requiring LPTV stations to go off the air and risk losing their licenses – and their audiences.

Respectfully submitted,

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